HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.25558 of 2006

Dated:12-11-2007

Between:

Yelugubanti Rukmini
and others.

..... Pet

AND

The State of A.P., rep by
District Collector,
Kakinada, East Godavari.

And others.

..... Respc

Counsel for the petitioners : Sri S.Srirama Chandra Murthy

Counsel for the respondents : A.G.P. for Land Acquisition.

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HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.25558 of 2006

O R D E R:

This writ petition is filed for a writ of mandamus to declare initiation of proceedings under the Land Acquisition Act 1894 (for short "the Act") as arbitrary and illegal to the extent they relate to the patta lands of petitioners in survey No.52 of Veerampalem village, Rangampalem Mandal, East Godavari district.

A perusal of the affidavit filed in support of the writ petition shows that the main grievance of the petitioners is that though the respondents are poor farmers, their lands are sought to be acquired by dispensing with enquiry under Section 5A of the Act. The petitioners further pleaded that there are government lands available for providing house sites to eligible persons under Indiramma Pathakam and that had the respondents conducted an enquiry under Section 5A of the Act, petitioners would have convinced them to drop the proposal to acquire their lands.

A counter affidavit has been filed by Mandal Revenue Officer, Rangampeta mandal, East Godavari district in which it is inter alia mentioned that for providing house sites to eligible persons under Indiramma programme, the lands of the petitioners are being acquired; that a draft notification was approved by the District Collector on 24.5.2006 and the same was published as required under the provisions of the Act; that similarly draft declaration under Section 6 of the Act was also published and since there was urgency, enquiry under Section 5A of the Act has been dispensed with by invoking urgency clause under Section 17(4) of the Act. It is further stated that advance possession was directed to be taken by the Joint Collector, East Godavari district in his office proceedings dated 11.10.2006. Though in the counter affidavit made available to the Court page-5 is missing, the learned Assistant Government Pleader read the said page from his office copy of the counter affidavit to the effect that possession was taken on 30.11.2006. In para-14 at page-7 of the counter affidavit the said averment was reiterated.

Sri S.Sriramachandra Murthy, learned counsel for the petitioners

submitted that dispensing with enquiry under Section 5A of the Act for providing house sites to a section of the people in the society by denying valuable property of the citizens is wholly arbitrary. He further submitted that though possession was said to have been taken on 30.11.2006, despite lapse of about one year, so far, the land has not been utilized for the purpose for which it is sought to be acquired.

On the submission of the learned counsel for the petitioners, I have passed over the case to enable the learned Assistant Government Pleader to ascertain the present position. In the afternoon, on instructions, he stated that so far the land is not put to use. In my considered view in a case where enquiry under Section 5A of the Act is dispensed with, which pre-supposes existence of urgency, there is no justification for the respondents to take possession and keep the land idle for one year. This action on the part of the respondents itself suggests that they have mechanically dispensed with the enquiry though no urgency as such existed. I am therefore, of the view that the action of the respondents in dispensing with the enquiry constitutes arbitrary exercise of power. It is needless to say that State and its Officers have to act fairly in denying a citizen of his valuable property while exercising power of eminent domain which is expropriatory in nature. Unless the situation does not brook delay in holding enquiry, they cannot invoke the urgency clause in a routine manner. In am fortified in this view of mine by the judgment of the Supreme Court in **Hindustan Petroleum Corporation Limited Vs. Darius Shapur, Chennai**[1]**.** I am satisfied on the facts of this case that respondents have needlessly invoked the urgency clause in the present case.

For the aforementioned reasons, declaration dated 24.5.2006 issued under Section 6 of the Act is quashed. The respondents are directed to hold enquiry under Section 5A of the Act after giving reasonable opportunity to the petitioners.

The writ petition is allowed to the extent indicated above.

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C.V.NAGARJUNA REDDY,J

Date:12.11.2007
mdaa

[1] AIR 2005 SC 3520